

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-2267-2020 (O&M)

Date of Decision:-20.1.2020

Ankit Shrivastav

... Petitioner

Versus

Binod Kumar Rai

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. N.S.Sodhi, Advocate for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court challenging order dated 6.11.2019 whereby the learned trial Court has declined the request of the petitioner for examining Handwriting Expert.
2. A few facts necessary to notice for disposal of this petition are that respondent Binod Kumar Rai instituted a complaint under Section 138 of Negotiable Instruments Act against the petitioner Ankit Shrivastav alleging therein that the petitioner had borrowed an amount of ₹ 2,30,000/- from him and in order to repay the same, the petitioner had issued two cheques i.e. cheque No.073443 and cheque No. 073444 of 25.5.2017, each for an amount of ₹ 1,15,000/-. However, the said cheques, upon presentation, were dishonoured, leading to filing of the complaint.
3. During the pendency of the trial, an application under Section 311 Cr.P.C. was moved on behalf of the petitioner/accused for examination of two

witnesses. The contents of the application dated 19.7.2019 (Annexure P-6) read as follows :-

“The applicant respectfully sheweth :-

1. That the above noted case is pending before this Hon'ble Court and fixed for today.
2. That the accused/applicant wants to examine the following witness in their witnesses to bring out the facts of the present case before this Hon'ble Court :-
 - a. Mr. Neeraj S/o Sh. Ram Shakal R/o E-552, Gali No. 13, Dabua Colony, Faridabad, Haryana, is most urgent to prove the above case, as he is the eye witness of the actual version of the singleness of the incident between complainant and accused.
 - b. Hand writing expert, corresponding to Ex.C-1 & Ex- C-2 to assist the court with his opinion in forming an opinion on the fact in issue.

It is therefore prayed that the present application may kindly be allowed and the above said witness may kindly be ordered to be summoned for proper adjudication of the case”

4. The aforesaid application was resisted by the complainant who filed his reply to the said application wherein it was asserted that the accused had already availed sufficient opportunities to lead evidence and that the application had been filed simply to delay the proceedings and to waste the time of the Court.
5. The learned trial Court considered the aforesaid application and while partly accepting the application inasmuch as the prayer of the applicant/accused for summoning Neeraj was accepted, the prayer of the petitioner for

examination of Handwriting Expert was declined vide impugned order dated 6.11.2019.

6. The learned counsel for the petitioner has submitted that the trial Court fell in error in declining the aforesaid prayer and that the petitioner stands seriously prejudiced on account of dismissal inasmuch as it is a case where the cheques in question had been issued as security cheques and were infact for an amount of ₹15,000/- only whereas the complainant had written the digit '1' before the figure 15,000/- so as to make it ₹ 1,15,000/-. The learned counsel has submitted that a perusal of the cheques in question with naked eye itself would show that the digit '1' as written twice in the figure 1,15,000/- are not parallel with each other. It has further been submitted that the examination of the said cheques by Expert would clearly indicate that the digit '1' before the figure 15,000/- had been written at a later stage and that the Handwriting Expert would be able to determine the age of ink which would clearly show that there has been tampering with the cheques in question.
7. I have considered rival submissions addressed before this Court.
8. The contention of the petitioner is to the effect that digit '1' had been written before the figure 15,000/- so as to make it ₹ 1,15,000/-. A perusal of the cheques in question would show that there is hardly any difference in the manner in which the digit '1' had been written. Although the digit '1' which is written twice in the figure ₹ 1,15,000/- are not strictly parallel but such type of distinction may not be sufficient to hold that there is some insertion or some tampering. Further, the amount of ₹ 1,15,000/- has been written

clearly in words and there is nothing to suggest that there is any interpolation or tampering with the same.

9. In any case, although the science pertaining to finger print examination is developed to a great extent and is reliable and to a great extent the science of handwriting comparison is also developed but as far as the science of age of ink is concerned, the same is not so developed so as to make the same the basis for reaching at any finding by the judicial Courts. It is virtually nigh impossible for a document expert to opine definitely as to when the ink as existing on the document was used on the disputed document because another relevant question that would crop up so as to raise doubts about such opinion would be as to the actual age of ink i.e as to when the ink in question was manufactured. A Constitution Bench of Hon'ble Supreme Court in case titled Union of India v. Jyoti Prakash Mitter, 1971 SCC(1) 396, elaborately dealt with this issue and laid down as under :-

"11. After consultations between the Ministry of Home Affairs and the Ministry of Law, the Home Ministry sent certain old writings of the year 1904, 1949, 1950 and 1959, and requested the Director to determine the age of the writing of the disputed horoscope and marginal note in the almanac by comparison. The Director on April 17, 1965 wrote that it "was impossible to give any definite opinion by such comparisons particularly when the comparison writings were not made with the same ink on similar paper and not stored under the same conditions as the documents under examination", and that it "will not be possible for a document expert, however reputed he might be, anywhere in the world, to give any definite opinion on the probable date of the horoscope and the ink writing in the margin of the almanac."

10. This Court in 2015(4) RCR(Criminal) 68 Sudarshan Kumar Versus Manish Manchanda, wherein an accused, facing trial in a complaint under Section 138 of the Negotiable Instruments Act, 1881 had moved an application at the stage of the defence evidence, for sending the cheques in question to the Director Forensic Laboratory for the purpose of determining the age of the writing in the body of the cheque and his application had been dismissed, upheld the order of dismissal. The relevant extract reads as under:-

- “6. This Court in case *Yash Pal v. Kartar Singh*, 2003 (3) RCR (Civil) 701, has also laid down that expert opinion to check the *age of ink* cannot help to determine the date of writing of the document as the *ink* used in the writing of the document may have been manufactured years earlier.
7. In case *Tarsem Singh v. Ravinder Singh* 2014(11) RCR (Civil) 2112, this Court has again reiterated that there is no scientific method available for determine the *age* of the *ink* . In case *S. Gopal v. D. Balachandran* 2008(2) RCR (Criminal) 466, the Hon'ble Madras High Court has taken the same view and laid down that the *age* of the *ink* cannot be determined by an expert with scientific accuracy. The same legal position has been reiterated in cases *R. Dennis Raja v. T. Subbiah* 2012 (3) RCR (Criminal) 212, *K. Vaiavan v. Selvaraj* 2012(4) RCR (Criminal) 942 and *Vinod Maroti v. Jitendra* 2015 ACD 198.
8. Thus, in view of the consistent rule of law laid down in the cases referred above, it will not be possible for an expert to give any definite opinion on the *age* of the *ink* as there is no accurate scientific method to determine the *age* of the *ink*.”

11. In view of the aforesaid discussion, this Court does not find any infirmity in the impugned order and the same is hereby affirmed. Finding no merit in the petition, the same is hereby dismissed.

20.1.2020

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No